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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 RICKY DALE ROUNDY,

9 Petitioner,

10 v.

11 ELDON VAIL,

12 Respondent.

Case No. C09-5001BHS

ORDER OVERRULING  
PETITIONER'S OBJECTIONS  
AND ADOPTING REPORT AND  
RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation of the  
14 Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 21), and Petitioner's  
15 Objections to the Report and Recommendation (Dkt. 22).

16 On July 7, 2009, Judge Creatura issued the Report and Recommendation and  
17 recommended that Petitioner's Writ of Habeas Corpus (Dkt. 1) be "DISMISSED WITH  
18 PREJUDICE as time barred." Dkt. 21 at 5. On July 17, 2009, Petitioner objected to the  
19 Report and Recommendation arguing that he timely filed his state court petition. Dkt. 22 at  
20 1-2. However, Judge Creatura's report accurately reflects the record as to when Petitioner's  
21 sentence became final (April 1, 2005) and when Petitioner filed his state court petition (July  
22 9, 2007). The petition was filed more than one year after the sentence and exceeded the one-  
23 year period of limitation set forth in 28 U.S.C. § 2244(d). Therefore, Petitioner's objection  
24 is without merit.


25 Petitioner also requests a Certificate of Appealability. Dkt. 22 at 2. The district court  
26 should grant an application for a Certificate of Appealability only if the petitioner makes a  
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1 “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). In this  
2 case, Petitioner has failed to make a substantial showing that he has been denied a  
3 constitutional right. Therefore, the Court denies Petitioner’s request for a Certificate of  
4 Appealability.

5 The Court having considered the Report and Recommendation, Petitioner’s  
6 objections, and the remaining record, does hereby find and order:

- 7 (1) The Court **OVERRULES** Petitioner’s objections;  
8 (2) The Court adopts the Report and Recommendation;  
9 (3) This petition is **DISMISSED** because it is time barred; and  
10 (4) Petitioner’s request for a Certificate of Appealability is **DENIED**.

11 DATED this 13<sup>th</sup> day of August, 2009.

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14 BENJAMIN H. SETTLE  
15 United States District Judge  
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